

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

ELLIOT C. BOOSE,

Plaintiff,

v.

CASE NO. 07-12098
HON. LAWRENCE P. ZATKOFF

FORD MOTOR COMPANY,

Defendant.

/

OPINION AND ORDER DISMISSING COMPLAINT UNDER 28 U.S.C. § 1915(e)

I. INTRODUCTION

Plaintiff Elliot Boose filed his *pro se* Complaint on May 15, 2007. In his Complaint, Plaintiff states that Defendant Ford Motor Company infringed on his copyright by considering producing a television reality show. Currently before the Court is Plaintiff's request to proceed without prepayment of fees. Plaintiff's request to proceed without prepayment of fees is GRANTED; however, the Court will DISMISS Plaintiff's Complaint under 28 U.S.C. § 1915(e)(2).

II. BACKGROUND

In his complaint, Plaintiff claims to have conceived of an idea for a television show in which contestants would compete for the opportunity to assist in the development of a new model Ford Vehicle. According to Plaintiff, he mailed his idea to William Clay Ford, Jr., and received a response from Defendant's Idea Department indicating that his idea had been received. Thereafter, Plaintiff corresponded with various Ford employees via email regarding his idea and was informed that Defendant does not accept unsolicited marketing ideas. Plaintiff then claims that Ford infringed on his copyrighted material by considering the development of a similar concept. Plaintiff has filed the

current suit claiming that Defendant infringed on his copyright and requesting that Defendant compensate him for his idea.

III. ANALYSIS

A. Plaintiff's Request to Proceed without Prepayment of Fees

Plaintiff has filed a motion to proceed without prepayment of fees. Under 28 U.S.C. § 1915(a), “any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding . . . without prepayment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefor.” The reference to assets of “such prisoner” is likely a typographical error; thus, § 1915(a) applies to all natural persons. *See Floyd v. U.S. Postal Serv.*, 105 F.3d 274 (6th Cir. 1997). If a motion to proceed without prepayment of fees is filed and accompanied with a facially sufficient affidavit, the court should allow the complaint to be filed. *See Gibson v. R.G. Smith Co.*, 915 F.2d 260, 261 (6th Cir. 1990) (citing *Phillips v. Carey*, 638 F.2d 207, 208 (10th Cir. 1981)). Only after the complaint is filed is it tested to determine whether it is frivolous or fails to state a claim. *See Gibson*, 915 F.2d at 261. The Court finds Plaintiff’s financial affidavit facially sufficient; therefore, the Court will grant Plaintiff’s motion to proceed without prepayment of fees.

B. Dismissal Under § 1915(e)(2)

Once a complaint is filed *in forma pauperis* under § 1915(a), it is tested under § 1915(e). Under 28 U.S.C. § 1915(e)(2), a court “shall dismiss” the case at any time if the court finds that the case is “(i) frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C. §

1915(e)(2)(B). A complaint is frivolous under § 1915 if it lacks an arguable basis in law or fact. *See Neitzke v. Williams*, 490 U.S. 319, 323 (1989); *see also Wilson v. Yaklich*, 148 F.3d 596, 600 (6th Cir. 1998) (stating that complaints can be dismissed as frivolous “only when the claim is based on an indisputably meritless legal theory, or where the complaint’s factual contentions are clearly baseless.”). The Court’s determination of failure to state a claim under § 1915 is the same as its determination under FED. R. CIV. P. 12(b)(6). *See* 1 MOORE’S FED. PRACTICE § 4.41[3]. A complaint fails to state a claim where it lacks “either direct or inferential allegations respecting all the material elements to sustain a recovery under *some* viable legal theory.” *See Schied v. Fanny Farmer Candy Shops, Inc.*, 859 F.2d 434, 436 (6th Cir. 1988). Moreover, although any ambiguities must be resolved in the plaintiff’s favor, *see Jackson v. Richards Med. Co.*, 961 F.2d 575, 577-78 (6th Cir. 1992), the court is “not required to accept non-specific factual allegations and inferences or unwarranted legal conclusions.” *Hendrock v. Gilbert*, 68 Fed. Appx. 573, 574 (6th Cir. 2003) (citations omitted). Finally, “courts have no discretion in permitting a plaintiff to amend a complaint to avoid a *sua sponte* dismissal. If a complaint falls within the requirements of § 1915(e)(2) when filed, the district court should *sua sponte* dismiss the complaint.” *McGore v. Wrigglesworth*, 114 F.3d 601, 612 (6th Cir. 1997).

The Court finds that the Plaintiff’s Complaint fails to state a claim upon which relief can be granted. Plaintiff’s complaint fails to set forth facts that support his allegation that he had a valid and enforceable copyright in his idea for a television show. Furthermore, the complaint fails to state how exactly Defendant copied his idea in a legal sense. Accordingly, Plaintiff’s Complaint fails to state a claim upon which relief can be granted under FED. R. CIV. P. 12(b)(6). *See Schied*, at 436; *see Hendrock*, at 574. Additionally, the Court finds that Plaintiff’s complaint has no arguable basis in

fact and is, therefore, frivolous. Because the Court has no discretion to allow the Plaintiff to amend his Complaint under § 1915(e), the Court must dismiss Plaintiff's Complaint. *See McGore*, at 612.

IT IS SO ORDERED.

s/Lawrence P. Zatkoff
LAWRENCE P. ZATKOFF
UNITED STATES DISTRICT JUDGE

Dated: June 11, 2007

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this Order was served upon the attorneys of record by electronic or U.S. mail on June 11, 2007.

s/Marie E. Verlinde
Case Manager
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